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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re:

GIGA WATT, Inc., a Washington
corporation,

Debtor.

Case No. 18-03197 FPC 11

The Honorable Frederick P. Corbit

**DECLARATION OF MARK D.
WALDRON IN SUPPORT OF
TRUSTEE'S MOTION FOR
ORDER: (I) SETTING EXPEDITED
HEARING ON REQUEST FOR
AUTHORITY TO RE-OPEN THE
TNT FACILITY AND TO BORROW
ON INTERIM BASIS; (II)
AUTHORIZING RE-OPENING OF
TNT FACILITY; AND (III)
APPROVING FINANCING ON
INTERIM AND FINAL BASIS WITH
SUPER-PRIORITY UNSECURED
STATUS**

INTERIM HEARING

Date: August 29, 2019
Time: 10:00 a.m.
Location: 904 West Riverside Ave.
Suite 304
Spokane, WA 99201

1 I, Mark D. Waldron, declare as follows:

2 1. I submit this declaration in my capacity as the duly appointed
3 Chapter 11 Trustee (the “Trustee”) in the bankruptcy case of the above-captioned
4 debtor (the “Debtor” or “Giga Watt”) and in support of the *Trustee’s Motion for*
5 *Order (i) Setting Expedited Hearing on Request for Authority to Re-Open the TNT*
6 *Facility and to Borrow on Interim Basis; (ii) Authorizing Re-Opening of TNT*
7 *Facility; and (iii) Approving Financing on Interim and Final Basis With Super-*
8 *Priority Unsecured Status* (the “Motion”), filed herewith. The statements set forth
9 herein are based on my investigation of the Debtor’s affairs, which is ongoing,
10 and, except where otherwise noted, are based on personal knowledge. If called as
11 a witness, I would and could competently testify thereto.

12 2. The Debtor operated two crypto-mining facilities prepetition: a
13 facility in Moses Lake, Washington (the “Moses Lake Facility”); and a facility in
14 East Wenatchee, Washington (the “TNT Facility”). At these facilities, the Debtor
15 mined three types of cryptocurrency: Bitcoin; Ethereum; and Litecoin.

16 THE MOSES LAKE FACILITY

17 3. The Grant County Public Utility District provides power to the
18 Moses Lake Facility pursuant to an agreement between the Grant County Public
19 Utility District and the Moses Lake Landlords. In mid-January 2019, before I was
20 appointed, the Grant County Public Utility District stopped providing power to the
21 Moses Lake Facility for nonpayment of electricity.

22 4. With the Court’s permission, I caused the Estate to borrow funds
23 from the Moses Lake Landlords to pay the Grant County Public Utility District to
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1 resume electrical service to the Moses Lake Facility and to re-commence
2 operations at the Moses Lake Facility. On May 10, 2019, the Court approved the
3 re-opening of a portion of the Moses Lake Facility pursuant to its *Order Granting*
4 *Chapter 11 Trustee's Motion for Order Approving Agreement with Moses Lake*
5 *Landlords* [ECF 300]. On May 20, 2019, the Court approved the re-opening of
6 another portion of the Moses Lake Facility, pursuant to the *Order Granting*
7 *Chapter 11 Trustee's Motion for Order Approving Moses Lake Three-Way*
8 *Agreement* [ECF 309], dated May 20, 2019 (collectively, the "Moses Lake
9 Orders"). Currently, all of Moses Lake Facility is up and running except for two
10 pods. A third party has asserted an interest in one of the two unopened pods. I
11 contest this party's assertion and am currently attempting to negotiate with this
12 party.

13 5. Pursuant to the Moses Lake Orders, the Court authorized me to cause
14 the Estate to borrow the sum of \$169,500.19 at 19.9% interest (the "Moses Lake
15 Catch-Up Power Payment"). With respect to the Moses Lake Catch-Up Power
16 Payment, the Court granted the Moses Lake Landlords a super-priority claim
17 pursuant to section 364(c)(1) of the Bankruptcy Code, the same priority that I am
18 requesting for the loan at issue in this Motion. As of the end of June 2019, I have
19 fully satisfied this super-priority obligation to the Moses Lake Landlords.

20 6. The Moses Lake Orders also authorized a revenue-sharing
21 arrangement pursuant to which the amount of payments to the Moses Lake
22 Landlords on the Moses Lake Loan and for past due administrative expenses and
23

1 other administrative expenses owed to the Moses Lake Landlords would depend
2 on the amount of net monthly revenues.

3 7. The Moses Lake Facility generated approximately \$400,000 in gross
4 revenues in each of June and July 2019. *See Chapter 11 Trustee's Monthly*
5 *Financial Report for June 2019*, filed on July 15, 2019 [ECF 342], p. 1, para. 1,
6 and *Chapter 11 Trustee's Monthly Financial Report for July 2019*, filed on
7 August 14, 2019 [ECF 352], p. 1, ¶ 1. All current obligations are being met on a
8 timely basis. I have also paid approximately \$200,000 in past due administrative
9 rent to the Moses Lake Landlords. Currently, \$51,000 in past due administrative
10 rent remains due and owing to the Moses Lake Landlords. The revenue-sharing
11 obligation will end when the past due administrative rent is paid in full.

12 8. The TNT Facility has four buildings, Buildings A, B, C, and H
13 (referred to as H1 and H2), which the Debtor leases from TNT Business Complex
14 LLC for \$11,600 per month. Pre-petition, the Debtor operated the TNT Facility
15 and invested in tenant improvements at the TNT Facility.

16 THE TNT FACILITY

17 9. Effective May 14, 2018, Giga Watt entered into a power contract
18 with the DC PUD, the *Interconnection and Service Agreement* (the "TNT Power
19 Contract"), pursuant to which the DC PUD agreed to provide up to 3.3MW of
20 power to the Debtor's operations at the TNT Facility, subject to the terms of the
21 TNT Power Contract. The DC PUD terminated power to the TNT Facility in
22 December 2018. The DC PUD requires ten (10) days after payment of the Catch-
23

1 Up Power Payment (defined below) before it can resume power to the TNT
2 Facility.

3 10. The DC PUD has informed me of the following additional facts: On
4 or shortly after the Petition Date, the DC PUD sent a written notification to the
5 Debtor pursuant to 11 U.S.C. § 366 requiring adequate assurance in the amount of
6 \$128,000 for continued service at the TNT Facility. On or about December 18 or
7 19, 2018, the Debtor's then-counsel requested an extension of time to provide
8 adequate assurance. The DC PUD denied the request and the Debtor did not
9 provide adequate assurance by December 20, 2018 as required. On or about
10 December 20, 2018, the DC PUD disconnected the power to the TNT Facility.

11 11. I have negotiated the TNT Loan pursuant to the authority vested in
12 me by the Preliminary Injunction that was entered in the adversary proceeding that
13 is pending in this case.

14 PANGBORN

15 12. I have determined that there is no ability to finish the development of
16 the Pangborn site. In June 2019, the DC PUD indicated during an in-person
17 meeting that it would not reconsider its decision to terminate the Interconnection
18 and Service Agreement, dated March 7 12, 2017, between the DC PUD and the
19 Debtor with respect to the Debtor's site at Pangborn. That same month, I rejected
20 the Debtor's lease of the Pangborn site.

21 INABILITY TO OBTAIN CREDIT ON ADMINISTRATIVE BASIS

22 13. My counsel and I contacted not less than seven (7) potential lenders
23 to obtain this Loan. Based on these efforts, and my significant experience as a
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1 bankruptcy trustee, I have concluded that I could not obtain financing on an
2 administrative basis pursuant to section 503(b)(1) of the Bankruptcy Code.

3 14. I believe that at least four factors have made it impossible to borrow
4 on an administrative basis. First, I do not have basic pre-petition financial
5 statements, which prevents lenders from conducting typical due diligence. Second,
6 the TNT Facility is subject to litigation, which increases risk. Third, the amount to
7 be borrowed is relatively small, which increases relative cost. Fourth,
8 cryptocurrency's value is volatile, and its long-term value is uncertain. For these
9 reasons and based on my experience, I am not able to obtain financing without
10 offering a super-priority basis.

11 THE LENDER

12 15. The Lender is a well-respected, experienced bankruptcy lawyer,
13 based in San Francisco, CA. She graduated from Yale Law School.

14 16. The Lender and my counsel have been involved in multiple other
15 bankruptcy cases, including the bankruptcy case of Empyrean Towers, LLC, Case
16 No. 15-42341, filed in the U.S. Bankruptcy Court for the Northern District of
17 California, Oakland Division. The Lender represented the Chapter 11 Trustee. My
18 counsel represented the Official Committee of Unsecured Creditors in that case.
19 Cause exists to hear the Trustee's request to re-open the TNT Facility on
20 shortened notice.

21 EXPEDITED CONSIDERATION

22 17. The monthly rent for the TNT Facility is \$11,600. The Estate is
23 meeting its current rent obligations at the TNT Facility. Yet, the TNT Facility is

1 currently generating no revenue. I am informed that it will take approximately one
2 month after electricity resumes for the mining operation to be at a reasonable
3 capacity with optimization to follow thereafter. Considering the accruing monthly
4 rent and the lag time in becoming fully operational, I believe it is prudent and
5 necessary to re-open the TNT Facility as soon as is possible.

6 DECISION TO RE-OPEN THE TNT FACILITY

7 18. Every day that the TNT Facility remains closed is a day of lost
8 revenues. This loss of revenue is irreparable and immediate. Furthermore, the DC
9 PUD requires ten days after payment to resume electricity to the TNT Facility.
10 The sooner the Catch-Up Power Payment can be made, the sooner that clock can
11 begin to run. Further, the Lender will not advance the Catch-Up Power Payment
12 without payment of the origination fee. Therefore, it is necessary to also borrow
13 the origination fee on an interim basis.

14 19. In my opinion, re-opening the TNT Facility is a sound business
15 decision. As set forth in Schedule 2.6 of the Loan Agreement, which is attached to
16 the Motion as Exhibit B, I project, based on analysis and discussions with
17 consultants whom I have employed with Court approval, that after the TNT
18 Facility becomes fully operational, the TNT Facility will generate net monthly
19 revenues of \$48,470.00 during the loan repayment period, which will not exceed
20 12 months. After the Loan is repaid, projected net monthly revenues are \$96,940.
21 In addition to generating revenue for the benefit of creditors, re-opening the TNT
22 Facility will allow me to put at least two additional technicians back to work.

20. I have been paying the administrative rent for the TNT Facility. Re-opening the TNT Facility will enable the Estate to recoup this cost. It will also enable the Estate to benefit from the investment in tenant improvements that the Debtor made in the TNT Facility pre-petition.

DECISION TO OBTAIN POST-PETITION CREDIT

ON SUPER-PRIORITY BASIS

21. I have conferred with Lauren Mieke and Doug Pratt, two cryptocurrency experts who have been retained with the Court's permission to help me to manage the Debtor's business operations. Based on those discussions and my review of the facts and circumstances, I have determined that the Loan is a prudent and sound business decision.

22. First, in my opinion, the Loan is necessary. Although I have made significant progress at the Moses Lake Facility, the Estate does not have \$154,512 available to pay the DC PUD to re-open the TNT Facility without borrowing that sum. Second, as set forth above, the Loan will allow the Estate to begin generating additional revenues for the benefit of creditors. This will allow the Estate to recoup the administrative rent that the Estate has paid post-petition and the tenant improvement investments that the Debtor made pre-petition.

23. Third, in my opinion, the terms are reasonable and beneficial. The Lender has agreed to give the Estate a two-month grace period before payments have to be made on the Loan. Thereafter, the Estate will repay the Loan every month in whichever amount is greater: (1) \$25,000 or (2) 50% of net monthly revenues generated from the TNT Facility. Net monthly revenues are defined in

1 the Loan Agreement as monthly gross revenues less monthly electricity, monthly
2 rent and monthly labor costs for the TNT Facility operations.

3 24. The revenue-sharing arrangement intends to ensure that the Estate
4 will be able to comply with its repayment obligations if cryptocurrency valuations
5 decrease, but also able to aggressively pay down the Loan balance if
6 cryptocurrency valuations increase. Further, there is no prepayment penalty. The
7 Lender has agreed to forego attorney's fees incurred in negotiating and drafting
8 the Loan and otherwise obtaining its approval.

9 25. Accordingly, re-opening the TNT Facility on the terms set forth in
10 the Loan Agreement is an exercise of sound business judgment, in my opinion.

11 26. I have disclosed to the Lender that an adversary proceeding with
12 respect to the TNT Facility is pending and that I am operating under the authority
13 vested in me by the Preliminary Injunction.

14 To the best of my knowledge, I declare under penalty of perjury that the
15 foregoing is true and correct.

16 Executed this 22 day of August 2019 in Tacoma, Washington.

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19 Mark D. Waldron
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